

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION

SALVADOR YANEZ RUIZ, #35269-177 §

VS. §

CIVIL ACTION NO. 4:12cv697

CRIM. ACTION NO. 4:07cr42

UNITED STATES OF AMERICA §

REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

Movant Salvador Yanez Ruiz filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255, challenging constitutional violations concerning his Eastern District of Texas, Sherman Division conviction in Case No. 4:07cr42. He asks that he be given permission to file a successive § 2255 action. However, in his first motion filed pursuant to § 2255, Movant has been granted an out-of-time appeal. *See* Cause No. 4:09cv172. Accordingly, this motion is moot, and the case should be dismissed.

Recommendation

It is therefore recommended that the motion be dismissed without prejudice. Fed. R. Civ. Proc. 41(b); Rule 41, Local Rules for the Eastern District of Texas.

Within fourteen (14) days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations contained in the report.

A party's failure to file written objections to the findings, conclusions and recommendations contained in this Report within fourteen days after being served with a copy shall bar that party from

de novo review by the district judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

SIGNED this 18th day of December, 2012.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE